

UNITED STATES INTERNATIONAL TRADE COMMISSION

SYNTHETIC INDIGO FROM CHINA

Investigation No. 731-TA-851 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3310, June 2000)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of synthetic indigo, provided for in subheadings 3204.15.10, 3204.15.40, and 3204.15.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances exist with regard to imports of the subject merchandise.²

BACKGROUND

The Commission instituted this investigation effective June 30, 1999 following receipt of a petition filed with the Commission and the Department of Commerce by Buffalo Color Corporation, Parsippany, NJ, and the United Steelworkers of America, AFL-CIO/CLC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of synthetic indigo from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of December 30, 1999 (64 FR 73581). The hearing was held in Washington, DC, on May 2, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² Commissioners Stephen Koplan and Thelma J. Askey found that critical circumstances do not exist with regard to imports of the subject merchandise.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States is materially injured by reason of subject imports of synthetic indigo from China that the Department of Commerce (“Commerce”) found to be sold in the United States at less than fair value (“LTFV”). We also determine that critical circumstances exist with respect to the subject imports.¹

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”² Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”³ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation”⁴

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁵ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁶ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁷ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁸

¹ Commissioners Askey and Koplan dissenting. See Commissioner Askey’s and Koplan’s Separate Views on Critical Circumstances.

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(10).

⁵ See, e.g., NEC Corp. v. Dep’t of Commerce and U.S. Int’l Trade Comm’n, 36 F. Supp. 2d 380 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁶ See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁷ Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991).

⁸ Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

B. Product Description

In its final determination, Commerce defined the imported merchandise within the scope of this investigation as follows:

[D]eep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as “Vat Blue 1.” Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (*e.g.*, powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this investigation are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”).⁹

Synthetic indigo and its derivatives, pre-reduced indigo and solubilized indigo (“synthetic indigo” or “indigo”), are designated commercially as “Vat Blue 1.”¹⁰ Indigo is a vat dye¹¹ with a characteristic deep blue color that has good resistance to color degradation by light or heat.¹² Indigo dyes are used chiefly as fiber and fabric dyes, mostly in connection with the manufacture of denim products. A unique characteristic of indigo is that it fades evenly when washed.¹³ Approximately 98 percent of indigo dyes is used in the production of denim; the remaining two percent is used in the food industry and in other applications.¹⁴

All natural¹⁵ and synthetic dyes are classified according to the Colour Index, which is published jointly by the Society of Dyers and Colourists, Bradford, England, and the American Association of Textile Chemists & Colorists, Research Triangle, NC.¹⁶ The vast majority of indigo imported into the United States is generally in the form of water-insoluble dry powder which requires the addition of an alkaline reducing agent such as sodium hydroxide (caustic soda) to form a water-soluble salt that can be absorbed by the fabric to be colored.¹⁷ Indigo dyes which already contain enough of an alkaline reducing

⁹ 65 Fed. Reg. 25706 (May 3, 2000).

¹⁰ Confidential Staff Report (“CR”) at I-2, Public Staff Report (“PR at I-2”).

¹¹ Vat dyes are water-insoluble dyes that can be chemically reduced (vatted) to a colorless water-soluble (leuco) form in which they can readily penetrate fibers. Subsequent oxidation then produces the insoluble colored form which remains in and colors the fiber. Vat dyes are generally used for dyeing cotton, wool, and cellulose acetate. CR at I-2, n.6

¹² CR at I-2, PR at I-2.

¹³ CR at I-2, PR at I-2.

¹⁴ CR at I-3, PR at I-2.

¹⁵ Synthetic indigo, which is made through the synthesis of various chemicals, has replaced natural indigo, which is extracted from the indigo plant, in commercial applications. Natural indigo is no longer cost effective to produce, although there is no chemical difference between natural and synthetic indigo. CR at I-2, n.5, PR at I-2, n.5.

¹⁶ CR at I-3, PR at I-2.

¹⁷ CR at I-2-I-3, PR at I-1.

agent and water to make them useful with a minimum of further preparation are said to be “pre-reduced” or “solubilized.”¹⁸

Most indigo dyes are used by denim manufacturers, with a small amount going to food colorists. Denim mills use dyes in the solution or paste form in their operations, which are supplied domestically by the petitioner, Buffalo Color Corporation (“BCC”), and also by the U.S. firms that convert the imported powder material into a paste form. BCC markets most of the dyes it makes directly to the end-user. The subject merchandise generally enters the United States in powder form in order to reduce shipping costs and is then processed into a solution or paste and sold to end-users. Both the domestic and imported indigo dyes are delivered to denim mills and are interchangeable at this point of use.¹⁹

C. Domestic Like Product

In the preliminary phase of this investigation, the Commission found one domestic like product, “synthetic indigo,” corresponding with Commerce’s description of the subject merchandise. In so doing, the Commission considered three domestic like product issues.²⁰ First, using the traditional six-factor like product analysis, the Commission rejected respondents’ contention that indigo powder and indigo paste should be separate like products. In reaching this finding, the Commission relied on shared fundamental characteristics and functions of both forms of indigo dye as well as common manufacturing processes.²¹ Second, the Commission considered whether indigo slurry, a crude form of indigo, should be a separate like product. Applying a semi-finished products analysis, the Commission determined that a separate like product finding was not warranted given that indigo slurry is used exclusively for indigo production and that no separate market exists for indigo slurry.²² Finally, applying the traditional six-factor analysis, the Commission determined that indigo used by the food coloring industry and indigo used by the textile industry were not separate like products. In making this finding, the Commission noted that while there are differences in physical characteristics and slight variations in composition exist, the two types of indigo had the same chemical composition, and at the critical chemical synthesis stage were produced by the same facilities and the same employees.²³

No party has challenged the Commission’s domestic like product determination in the final phase of this investigation and no new evidence has been obtained that would call into question the Commission’s reasoning in the preliminary determination. Consequently, we reaffirm the Commission’s finding in the preliminary determination that the domestic like product is synthetic indigo corresponding to Commerce’s scope.

¹⁸ CR at I-3, PR at I-2..

¹⁹ CR at I-5, PR at I-3.

²⁰ Preliminary Determination at 6.

²¹ Preliminary Determination at 6-7.

²² Preliminary Determination at 7.

²³ Preliminary Determination at 8-9.

II. DOMESTIC INDUSTRY

A. In General

Section 771(4) of the Act defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product.”²⁴ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States.²⁵

There are two issues in this investigation concerning the definition of the domestic industry. The first concerns whether the domestic industry should be defined to include entities that convert the Chinese indigo powder into paste (converters). The second concerns whether appropriate circumstances exist to exclude BCC from the domestic industry as a related party.

B. Whether Converters Are Part of the Domestic Industry

In the preliminary determination, the Commission found that converters should not be included in the domestic industry. While acknowledging that the information on the record on this issue was limited, the Commission concluded that converters were not engaged in sufficient production-related activity to be included in the domestic industry. In particular, the Commission found that the converters’ capital investment and employment levels appeared quite low, and the data were at best mixed as to the extent of the conversion process and the value added by it. Nevertheless, the Commission indicated that it would revisit this issue in the final investigation.^{26 27}

²⁴ 19 U.S.C. § 1677(4)(A).

²⁵ See e.g., DRAMs From Taiwan, Inv. No. 731-TA-811 (Final), USITC Pub. 3256 at 6 (Dec. 1999); Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan, Invs. Nos. 701-TA-373, 731-TA-769-775 (Final), USITC Pub. 3126, at 7 (Sept. 1998); Manganese Sulfate from the People’s Republic of China, Inv. No. 731-TA-725 (Final), USITC Pub. 2932, at 5 & n.10 (Nov. 1995) (the Commission stated it generally considered toll producers that engage in sufficient production-related activity to be part of the domestic industry); see generally, e.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain (“OCTG”), Inv. Nos. 701-TA-363-364 (Final) and Inv. Nos. 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (not including threaders in the casing and tubing industry because of “limited levels of capital investment, lower levels of expertise, and lower levels of employment”).

²⁶ Preliminary Determination at 10-11.

²⁷ In deciding whether a firm qualifies as a domestic producer, the Commission generally analyzes the overall nature of a firm’s production-related activities in the United States, although production-related activity at minimum levels could be insufficient to constitute domestic production. The Commission generally considers six factors:

- (1) source and extent of the firm’s capital investment;
- (2) technical expertise involved in U.S. production activities;
- (3) value added to the product in the United States;
- (4) employment levels;
- (5) quantity and type of parts sourced in the United States; and
- (6) any other costs and activities in the United States directly leading to production of the like product.

In the final phase of the investigation, Petitioners argue that converters should be excluded from the domestic industry because “they fail every prong of the domestic producer analysis.”²⁸ Conversely, Respondents argue that converters should be included in the domestic industry.²⁹

The information collected in the final phase of this investigation confirms the Commission’s findings in the preliminary determination with respect to converters. Converter questionnaire responses indicate that the value added by converters is low, ranging from ***.³⁰ Capital investment by converters also appears to be low, particularly when compared to the capital investment required to establish and maintain a synthetic indigo facility. Respondents did not challenge the Commission’s finding in the preliminary determination that it would require approximately \$3 million to build a new converting facility compared to \$60 million for a new manufacturing facility similar to BCC’s.³¹

Converter questionnaire responses also reveal that the sophistication of the technology involved, the necessary technical expertise required, and the amount of research and development invested in the conversion process all appear to be minimal. According to the converters, the process of converting indigo powder into paste begins with mixing the indigo powder with water. The mixture is then ground, or slurred, at which point more water may be added as well as caustic soda to adjust the pH balance. Finally, the batch is stirred and standardized.³² In contrast, the record indicates that the manufacturing process for indigo is far more complex, particularly the synthesizing of indigo, which is a very precise and

No single factor is determinative and the Commission may consider any other factors it deems relevant in light of the specific facts of any investigation. *See* OCTG, USITC Pub. 2911 at I-11 n.37. *See also* Large Newspaper Printing Presses, USITC Pub. 2988 (Aug. 1996) at 7-8. Commission practice has not clearly established a specific level of U.S. value added, or product finished value, required to qualify as a domestic producer; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, Inv. No. 731-TA-652 (Final), USITC Pub. 2783 at I-8-I-9 & n.34 (June 1994) (“no single factor -- including value added -- is determinative and . . . value added information becomes more meaningful when other production activity indicia are taken into account”); Low Fuming Brazing Copper Wire and Rod from New Zealand, Inv. No. 731-TA-246 (Final), USITC Pub. 1779 (Nov. 1985) (the Commission concluded that twenty percent value added by flux coaters was sufficient); Low Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-246 (Final), USITC Pub. 1790 (Jan. 1986) (value added in the United States was ten to twenty percent).

The Commission has also stated that a “modest percentage of domestically sourced parts or raw materials as a percentage of cost does not necessarily mean that a firm is not a domestic producer.” Certain All Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (Mar. 1989) at 13-14. Conversely, the Commission has decided not to include a firm in the domestic industry where its operations contributed only a “minor percentage of the total value” of the product. Certain Radio Paging and Alerting Devices from Japan, Inv. No. 731-TA-102 (Final), USITC Pub. 1410 (Aug. 1983) (operations involved assembly and soldering of foreign sourced parts involving little technical skill). *See also* Color Television Receivers from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 and 135 (Final), USITC Pub. 1514 (Apr. 1984) at 7-8 (Commission emphasized for the first time that no single factor--including value added--is determinative).

²⁸ Petitioners’ Prehearing Br. at 6-11.

²⁹ Respondents state that converters should be part of the domestic industry based on the fact that the U.S. indigo converter industry produced *** indigo as did BCC in 1999. Chinese Respondent’s Br. at 14. However, respondents did not address the factors traditionally examined by the Commission in determining whether a firm qualifies as a domestic producer.

³⁰ CR at Table IV-6, PR at Table IV-6. Conversion costs for reporting importers ranged from *** to *** percent of selling prices in 1999. *Id.*

³¹ Preliminary Determination at 10-11.

³² CR at IV-12, PR at IV-6.

exacting process, involving a variety of corrosive and toxic material inputs.³³ Given the contrast in technologies, it is not surprising that the four converters employed only a total of *** employees in the period examined, compared to BCC's employment of *** individuals.³⁴

In sum, the record indicates that the converters are not engaged in sufficient production-related activity to support their inclusion in the domestic industry. In particular, capital investment and employment levels, and the value added by conversion are quite low. Moreover, the conversion process itself appears to be relatively simple, requiring little technical expertise. We, therefore, find that converters are not part of the domestic industry.

C. Related Parties

We must further decide whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or that are themselves importers.³⁵ Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.³⁶

A related party issue arises in this case because BCC, the sole domestic producer of the domestic like product, imported the subject merchandise during the period of investigation. In the preliminary phase of this investigation, the Commission found that appropriate circumstances did not exist to exclude BCC from the domestic industry.³⁷

In the final phase of this investigation, none of the parties has argued for the exclusion of BCC, and no new evidence warrants changing the Commission's preliminary finding. According to its questionnaire response, BCC accounted for *** percent of total subject imports in 1998, down from *** percent in 1997.³⁸ The volume of BCC's subject imports declined substantially in 1999, accounting for only *** percent of the total subject imports.³⁹ Moreover, BCC does not sell the subject imports

³³ CR at I-4, PR at Table I-3.

³⁴ CR at F-3, Table F-1, C-4, Table C-1, PR at F-3, Table F-1, C-4, Table C-1.

³⁵ 19 U.S.C. § 1677(4)(B).

³⁶ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 at 14, n.81 (Feb. 1997).

³⁷ Preliminary Determination at 12.

³⁸ CR at IV-2, PR at IV-3.

³⁹ CR at IV-3, PR at IV-3.

domestically, but used its subject imports solely to supplement its export markets.⁴⁰ These facts, taken together, indicate that BCC is committed to the domestic production of synthetic indigo, and that BCC's primary interest lies in domestic production and not importation. Accordingly, we find that appropriate circumstances do not exist to exclude BCC from the domestic industry.

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS OF SYNTHETIC INDIGO FROM CHINA

In the final phase of an antidumping duty investigation, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports under investigation.⁴¹ In making this determination, the Commission must consider the volume of the subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁴² The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."⁴³ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁴⁴ No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁴⁵

For the reasons discussed below, we determine that the domestic industry producing synthetic indigo is materially injured by reason of LTFV imports of synthetic indigo from China.

A. Conditions of Competition

There are several conditions of competition that are relevant to our analysis in this investigation. From 1997 to 1998, apparent consumption of indigo in the United States grew by *** percent, from *** million pounds to *** million pounds.⁴⁶ However, in 1999, apparent consumption shrank by *** percent to *** million pounds.⁴⁷

The demand for indigo is largely dependent upon the demand for denim generally, and blue denim in particular.⁴⁸ Two main elements determine the amount of indigo demanded by denim mills. The first is the amount of indigo on the cotton substrate. To get a darker shade of blue, the dyer must run the fabric through the indigo vat multiple times. The darker the shade that is desired, the more indigo is necessary to

⁴⁰ CR at IV-4, PR at IV-3.

⁴¹ 19 U.S.C. § 1673d(b).

⁴² 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B); *see also Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

⁴³ 19 U.S.C. § 1677(7)(A).

⁴⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁵ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁶ CR at Table IV-3, PR at Table IV-3.

⁴⁷ CR at Table IV-3, PR at Table IV-3.

⁴⁸ CR at II-5, PR at II-4.

achieve that shade. Thus, to the extent that darker shades of denim were popular in the last few years, the demand for indigo also increased.⁴⁹

Another element, which influences the overall demand for indigo, is the amount of blue denim produced.⁵⁰ Generally, apparent consumption of indigo has moved in tandem with blue denim production.⁵¹ In 1998, both blue denim production and indigo shipments increased significantly.⁵² These increases were due in part to the stockpiling of raw materials by denim manufacturers in anticipation of the end of federal cotton subsidies.⁵³ The record also indicates that the increase was a result of the cyclical nature of the demand of denim, as well as an overestimation of future demand by denim manufacturers.⁵⁴

More recently, the demand for denim has declined as fashion trends have moved toward khakis.⁵⁵ Additionally, domestic denim production has decreased as production of blue denim has moved abroad, specifically to Mexico.⁵⁶ These occurrences may result in smaller domestic shipments, but may also increase indigo exports.⁵⁷ Indeed, as domestic shipments fell from 1998 to 1999, relatively more of BCC's production went to service its export markets.⁵⁸

In addition to competition from the subject imports, the domestic product competes with fairly traded imports from Germany. In 1999, Germany accounted for *** percent of the total quantity of indigo imports and *** percent of the value.⁵⁹ One of the derivatives of synthetic indigo, C.I. 73001, or pre-reduced indigo, constitutes most of Germany's exports to the United States.⁶⁰ Because pre-reduced indigo is considered a higher quality good than standard indigo paste or powder, it often commands a price premium, reflected in its higher unit value.⁶¹

Finally, the record evidence indicates that the domestic product and subject imports are highly substitutable. The degree of substitution between domestic and imported synthetic indigo depends on a number of factors. The relative price of indigo has become an increasingly important factor in the

⁴⁹ CR at II-5-6, PR at II-4.

⁵⁰ CR at II-6, PR at II-4.

⁵¹ CR at II-6-7, PR at II-4.

⁵² CR at II-6, PR at II-4.

⁵³ CR at II-7-8, PR at II-7.

⁵⁴ CR at II-7, PR at II-4.

⁵⁵ CR at II-10-11, PR at II-7.

⁵⁶ CR at II-11, PR at II-7.

⁵⁷ CR at II-11-12, PR at II-7.

⁵⁸ CR at III-4, PR at III-2.

⁵⁹ CR at Table IV-1, PR at Table IV-1.

⁶⁰ According to BASF's importer questionnaire response, *** percent of imports from Germany were of pre-reduced indigo in 1999. CR at IV-5. BASF has been able to establish a relationship with one U.S. denim manufacturer, ***, whose manufacturing facility uses only pre-reduced indigo. Since pre-reduced indigo requires special machinery for processing and storage, switching from paste-form indigo to pre-reduced indigo usually requires some capital investment on the part of the manufacturer. Id.

⁶¹ CR at IV-5, PR at IV-3. According to one of BASF's customers, ***, the price of pre-reduced indigo is pegged to the price of 20-percent paste available in the United States. ***. Thus, as the price of 20-percent paste drops, so does the unit value of pre-reduced indigo. *** expects that if the antidumping duties are applied to subject imports, purchasers should expect a comparable rise in the unit value of pre-reduced indigo. CR at IV-5, n.11.

manufacture of denim, given the increased competition from denim produced overseas, and the movement of domestic firms offshore. Lead times, delivery reliability, technical service, and the quality of the indigo play roles in determining the ability of indigo purchasers to substitute one source for another. Although over three-quarters of responding purchasers listed quality the most important purchase factor, approximately 64 percent included price among the top three most important factors.⁶² In addition, eight purchasers compared Chinese indigo with domestic indigo on 14 factors. Of 112 possible comparisons, purchasers rated domestic and Chinese indigo as comparable 88 times.⁶³ Moreover, five out of eight responding importers reported that the products are interchangeable.⁶⁴

B. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁶⁵

Subject imports increased from 26.7 million pounds in 1997 to 28.1 million pounds in 1998, but then fell to 20.6 million pounds in 1999.⁶⁶ In contrast, U.S. shipments of subject imports increased from *** million pounds in 1997 to *** million pounds in 1999, or by *** percent.⁶⁷ As a result, the subject imports’ share of the U.S. market witnessed a period of growth, increasing from 42.4 percent in 1997 to 52.1 percent in 1999.⁶⁸ Consequently, the domestic industry’s market share fell by *** percentage points from *** percent in 1997 to *** percent in 1999.⁶⁹ The domestic industry’s market share experienced its largest drop from 1998 to 1999, when its shipments declined sharply.⁷⁰ This loss of market share by the domestic industry occurred even though U.S. apparent consumption increased by *** percent from 1997 to 1999.

Based on the foregoing, we find that the volume of imports of the subject merchandise is significant both in absolute terms and relative to consumption in the United States.

⁶² CR at II-15; PR at II-10.

⁶³ CR at II-17; PR at II-11.

⁶⁴ CR at II-18; PR at II-11.

⁶⁵ 19 U.S.C. § 1677(7)(C)(i).

⁶⁶ Increased subject imports in 1998 may be attributable to an anticipated strong increase in demand for denim in 1998. While demand did rise, it was not as strong as anticipated by U.S. importers. As a result, end-of-period inventories of subject imports rose in 1998. Subject imports declined as importers decided to draw off inventories to fill some of their shipments. Thus, subject import data alone do not capture the presence of imports in the U.S. market. CR at Table IV-1 and IV-2, n. 5.

⁶⁷ CR at Table IV-3, PR at Table IV-3. Subject import data contrast with U.S. shipments of subject imports during 1997-99 because BCC accounted for *** percent of total subject imports in 1997 and *** percent in 1998. That number declined substantially in 1999, when BCC accounted for only *** percent of total subject imports. CR at Table IV-2, PR at Table IV-2.

⁶⁸ CR at Table IV-4, PR at Table IV-4. Similarly, subject import share, by value, rose from 34.6 percent in 1997 to 45.9 percent in 1999.

⁶⁹ CR at Table IV-4, PR at Table IV-4.

⁷⁰ CR at Table IV-3, PR at Table IV-3.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁷¹

Prices for domestic synthetic indigo were stable at \$*** per pound in 1997 and then fell thereafter, reaching \$*** per pound in 1999.⁷² Prices for domestic indigo suffered their sharpest decline of *** percent at the beginning of 1998, and then fell in each subsequent quarter.⁷³ In comparison, prices for imported indigo from China fell consistently over the period of investigation, declining 27 percent, from \$1.12 per pound in the first quarter of 1997 to \$0.81 per pound in the fourth quarter of 1999.⁷⁴

In every quarter during the period examined, subject imports were priced below the domestic like product, with margins of underselling ranging from 10.1 percent to 27.7 percent.⁷⁵ As confirmed by Commission staff, the domestic producer lost sales totaling \$*** and involving *** pounds and lost revenues totaling \$*** on sales of *** since January 1996 due to the lower-priced subject imports.⁷⁶

Based on the declining domestic prices, the consistent underselling of the subject imports, and in light of the relatively high degree of substitutability between the subject imports and the domestic like product, we find that underselling by the subject imports is significant and that the subject imports have depressed prices for the domestic like product to a significant degree.

D. Impact of the Subject Imports on the Domestic Industry^{77 78}

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on

⁷¹ 19 U.S.C. § 1677(7)(C)(ii).

⁷² CR at V-5, Table V-1, PR at V-4, Table V-1.

⁷³ CR at V-5, Table V-1, PR at V-4, Table V-1.

⁷⁴ CR at V-5, Table V-1, PR at V-4, Table V-1.

⁷⁵ CR at V-6, Table V-1, PR at V-4, Table V-1.

⁷⁶ CR at V-8, PR at V-5.

⁷⁷ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce’s final antidumping duty margins are 77.89 percent for the specified producers/exporters and 129.60 percent for the China-wide rate. 65 Fed. Reg. 25706, 25707 (May 3, 2000).

⁷⁸ Chairman Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles From China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

the state of the industry.”⁷⁹ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the industry.”⁸⁰

Consistent with our finding that the volume of the subject imports during 1997-1999 was significant, and that the decline in prices for domestically-produced indigo from 1997 to 1999 was due to the subject imports to a significant degree, we find that the subject imports are having a significant adverse impact on the domestic industry.

As noted earlier, from 1997 to 1999, domestic apparent consumption of indigo grew by *** percent in quantity terms, increasing from *** million pounds in 1997 to *** million pounds in 1999,⁸¹ while U.S. shipments of synthetic indigo fluctuated downward during the same period.⁸² Domestic shipments experienced some growth by quantity between 1997-1998, increasing *** percent, before declining *** percent in 1999.⁸³ However, domestic shipments also declined in value by *** percent during 1997-1999.⁸⁴ The decline in value of domestic shipments resulted from a significant decline in the unit value of domestic indigo, dropping \$*** per pound from 1997 to 1999, from \$*** in 1997 to \$*** in 1999.⁸⁵ Total net sales of the domestic industry dropped during 1997-1999, falling from *** million pounds in 1997 to *** million pounds in 1999. As the volume of net sales fell, the value of these sales also dropped over the same period, from \$*** million in 1997 to \$*** million in 1999.

U.S. production steadily declined by *** percent during the period of investigation.⁸⁶ With capacity remaining unchanged during 1997-1999, the fall in U.S. production resulted in declining capacity utilization rates, which dropped from *** in 1997, to *** percent in 1999.⁸⁷ As U.S. production fell, the workforce also shrank. The average number of production and related workers declined by *** percent,⁸⁸ while hours worked also fell throughout 1997-1999, declining by *** percent.⁸⁹

As net sales values per pound declined, net operating income declined in each annual period, from \$*** million in 1997 to a loss of \$*** million in 1999, resulting in operating margins falling from *** percent in 1997 to a negative *** percent in 1999.⁹⁰

⁷⁹ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885).

⁸⁰ 19 U.S.C. § 1677(7)(C)(iii).

⁸¹ CR at Table IV-3, PR at Table IV-3.

⁸² CR at III-5, Table III-2, PR at III-3, Table III-2.

⁸³ CR at III-5, Table III-2, PR at III-3, Table III-2.

⁸⁴ CR at III-5, Table III-2, PR at III-3, Table III-2.

⁸⁵ CR at III-5, Table III-2, PR at III-3, Table III-2.

⁸⁶ CR at III-3, Table III-1, PR at III-2, Table III-1.

⁸⁷ CR at III-3, Table III-1, PR at III-2, Table III-1.

⁸⁸ CR at III-8, Table III-5, PR at III-4, Table III-5.

⁸⁹ CR at III-8, Table III-5, PR at III-4, Table III-5.

⁹⁰ CR at Table VI-1, PR at Table VI-1.

Based on the foregoing, we find that the subject imports are having an adverse impact on the domestic industry.

IV. CRITICAL CIRCUMSTANCES

Because Commerce made affirmative critical circumstances determinations with respect to certain imports from China and we have determined that the domestic synthetic indigo industry is materially injured by reason of subject imports from China, we must further determine “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping order to be issued.”⁹¹ The URAA SAA indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of the relief, the importers have seriously undermined the remedial effect of the order.”⁹²

In its final determination, based on the facts available, Commerce made affirmative findings of critical circumstances with respect to all the specified producers and all other producers and exporters.⁹³

Consistent with Commission practice, in considering the timing and volume of subject imports, we have compared import quantities prior to the filing of the petition with those subsequent to the filing of the petition.⁹⁴ Although Commerce typically compares the import volume of the subject merchandise for the three months immediately preceding and following the filing of the petition,⁹⁵ we are not required to analyze the same comparison periods that Commerce analyzed.⁹⁶

We generally consider a period encompassing several months before and after the filing of the petition for purposes of the critical circumstances analysis, unless circumstances warrant examining a different period.⁹⁷ Petitioners argued that the Commission should examine the three months prior to the

⁹¹ 19 U.S.C. § 1673d(b)(4)(A)(i)(emphasis added). The statute further provides that in making this determination: the Commission shall consider, among other factors it considers relevant--

- (I) the timing and volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

19 U.S.C. § 1673d(b)(4)(A)(ii).

⁹² SAA at 877.

⁹³ 65 Fed. Reg. 25706 (May 3, 2000).

⁹⁴ See Certain Preserved Mushrooms from China, India, and Indonesia, Inv. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999) at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplan), 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 19 (April 1997).

⁹⁵ See 19 C.F.R. § 351.206(i); Notice of Preliminary Determination of Sales at Less Than Fair Value Stainless Steel Sheet and Strip in Coils From Japan, 64 Fed. Reg. 108, 112 (Jan. 1, 1999).

⁹⁶ See Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

⁹⁷ See, e.g., Certain Hot-rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. ____ (June 1999) at 33-34; Certain Preserved Mushrooms from China, India, and Indonesia, Inv. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999) at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplan), 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (April 1997) at 19; Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

filing of the petition and the three months immediately after on the grounds that subject imports may have been suppressed because they would have been within 90 days of Commerce's pending preliminary determination scheduled for December 1999. Respondents did not indicate which period should be examined.⁹⁸

In this investigation, the petition was filed on June 30, 1999. We considered the data relevant to critical circumstances for the periods of April-June 1999 and July-September 1999, which roughly correspond to the three-month period preceding the filing of the petition and the three month period after the filing of the petition. Based on the examination of this period for this investigation, we find that the imports subject to Commerce's affirmative critical circumstances determinations would undermine seriously the remedial effect of the order.

In the three-month period preceding the filing of petition on June 30, 1999 (April, May, June), imports from the Chinese producers totaled *** pounds.⁹⁹ However, in the three-month period after the filing of the petition, the subject imports surged to *** pounds, an increase of more than 300 percent.¹⁰⁰ Import volumes fell significantly following this three month surge, and thereafter remained well below previous levels.¹⁰¹

During this massive increase in subject imports, prices for subject imports fell to their lowest levels for the period of investigation. Prices for synthetic indigo declined from \$0.84 per pound in April-June 1999 to \$0.81 per pound in July-September 1999.¹⁰² At the same time, domestic prices declined sharply, from \$*** during April-June 1999 to \$*** during July-September 1999.^{103 104}

The timing and volume of subject imports, the substitutability of the subject imports from China with the domestic like product described above in the analysis on price effects, falling domestic prices and high inventories support a conclusion that there was a subject import surge that is likely to seriously undermine the effect of the antidumping duty order. Accordingly, we make an affirmative critical circumstances finding.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing synthetic indigo is materially injured by reason of imports of synthetic indigo from China that Commerce found to be sold in the United States at LTFV. We also determine that critical circumstances exist with respect to subject imports from China.

⁹⁸ Petitioners' Br. at Posthearing Br., Appendix 3. Chinese Respondent's Posthearing Br. at 8.

⁹⁹ CR at IV-10, Table IV-5, PR at IV-6, Table IV-5.

¹⁰⁰ CR at IV-10, Table IV-5, PR at IV-6, Table IV-5.

¹⁰¹ CR at IV-10, Table IV-5, PR at IV-6, Table IV-5.

¹⁰² CR at Table V-1, PR at Table V-1.

¹⁰³ CR at Table V-1, PR at Table V-1.

¹⁰⁴ We have also considered information in the record on inventories of the subject imports. While the record data do not correspond directly to the period examined for critical circumstances, we note the 1999 inventory level of subject imports of 2.3 million pounds is not insignificant, and is equal to *** percent of U.S. shipments of the subject imports in 1999. CR at VII-4, Table VII-2, PR at VII-4, Table VII-2.

VIEWS OF COMMISSIONERS STEPHEN KOPLAN AND THELMA J. ASKEY ON CRITICAL CIRCUMSTANCES

Commerce made affirmative final determinations of critical circumstances with respect to exports of synthetic indigo by each of the Chinese exporters receiving separate rates, as well as producers/exporters receiving the PRC-wide rate. When Commerce makes an affirmative critical circumstances determination, the Commission is required to determine, for each domestic industry for which it makes an affirmative determination of material injury by reason of subject imports, “whether the imports subject to the affirmative [Commerce critical circumstances] determination ... are likely to undermine seriously the remedial effect of the antidumping order to be issued.”¹

Consistent with Commission practice in considering the timing and volume of imports, we have compared import quantities six months prior to the filing of the petition with those six months after the filing of the petition.² We note that the Commission is not required to examine the same period that Commerce examined in performing its critical circumstances analysis.³ In this investigation, the petition was filed mid-year on June 30, 1999. Accordingly, the data we considered relevant to critical circumstances was that for all of 1999.

Subject imports covered by Commerce’s affirmative critical circumstances finding totaled *** pounds six months prior to the filing of the petition and *** pounds six months after the filing of the petition.⁴ We note that during the final three months of 1999, imports from *** producers of subject merchandise who may be subject to Commerce’s affirmative critical circumstances determinations completely left the market. Thus, we carefully examined import levels for the nine months of 1999 when there were sufficient subject imports to determine whether there was a post-petition surge. Those data reveal that subject import volumes totaled between *** and *** pounds in each month but two, April and June. The import levels for those two months appear aberrational when viewed in the context of imports for the first nine months of 1999. As to the three months immediately following the filing of the petition, we find that imports in July were below the levels for January, February and March, imports in August were close to the levels in February and March, and imports for September were roughly at the January level. Thus, there was no surge in subject imports after the filing of the petition.

¹ 19 U.S.C. § 1673d(b)(4)(A)(I).

² See, e.g., Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, The Republic of Korea, Mexico, Taiwan, and The United Kingdom, Inv. Nos. 701-TA-380-382 and 731-TA-797-804 (Final), USITC Pub. 3208 (Jul. 1999) at 20-22; Certain Hot-rolled Steel Products from Japan, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 (Jun. 1999) at 33-34 & n. 129; Certain Preserved Mushrooms from China, India, and Indonesia, Inv. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999), at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplan), at 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 19 (April 1997); Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

³ See Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 (April 1997) at 34.

⁴ CR and PR at Table IV-5.

Moreover, importers' inventories of subject merchandise fell by 62.2 percent, from 6.0 million pounds in 1998 to 2.3 million pounds in 1999.⁵ Finally, we note that prices of subject imports prior to the filing of the petition were only slightly higher than those after filing.⁶

In sum, we do not find that the record evidence indicates that the relevant subject imports from China would undermine seriously the remedial effect of the order. Accordingly, we make a negative critical circumstances finding with respect to the relevant producers in China.

⁵ CR and PR at Table VII-2.

⁶ CR and PR at Table V-1.